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Important U.S. Supreme Court Opinions for Traffic Cases

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Important U.S. Supreme Court Opinions for Traffic Cases

GOHS/APAAC Advanced DUI Conference
August 31, 2020

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Why This Presentation?

- Obviously, U.S. Supreme Court Opinions are important.
  - They control U.S. Constitutional issues
  - AZ Supreme Court has not interpreted AZ Constitution to provide greater protection than U.S. very often for 4th & 5th Amendments
- We often overlook or forget about some of the SCOTUS opinions.
- Citing to SCOTUS opinions strengthens our briefs.
- By covering only SCOTUS opinions, we can introduce more to you.

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AZ vs. Feds

Arizona courts may not interpret the United States Constitution to provide more (or less) protection than United States Supreme Court case law has provided.

Arkansas v. Sullivan, 532 U.S. 769 (2001).

May only give greater protection under the Arizona Constitution.

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Fed & State

AZ constitution does not give any greater protection than the Fifth Amendment.

State v. White, 102 Ariz. 162 (1967).

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5th Amendment

No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;

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Miranda v. Arizona, 384 U.S. 436 (1966)

- If a person is subjected to custodial interrogation, he/she must be advised:
  - (1) of their right to remain silent,
  - (2) that anything they say can be used against them in court,
  - (3) they have a right to be assisted by an attorney, and
  - (4) they have the right to appointed counsel if they can't afford to hire their own.

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Defendants can challenge their statements as involuntary.

Courts are to look to the **totality of the circumstances** to determine if the suspect's will was overborn. *Schneckloth v. Bustamonte*, 93 S.Ct. 2041 (1973).

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Initial Analysis

- Is the suspect in custody?
- Is the suspect being questioned/interrogated by police?
- Is there a violation?
- What is the appropriate sanction?
  - Suppression of statements. *Miranda v. Arizona*, 384 U.S. 436 (1966).

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Fifth Amendment

Suspects must be affirmatively advised of the right to counsel, and other constitutional rights, prior to being subjected to custodial interrogation.

***Berkemer v. McCarty*, 468 U.S. 420 (1984).**

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What Constitutes Custody?

- Restraint of freedom of movement "of the degree associated with formal arrest"
- Mere fact investigation is focused on the suspect does not trigger need for *Miranda*

Minnesota v. Murphy, 465 U.S. 420 (1984). (1991).

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What Constitutes Custody?

- **Court's Are to Look At:**
  - **site of the interrogation**
  - **whether the objective indicia of arrest are present**
  - **form and length of the interrogation**

[*subjective intent was removed from factors*]

California v. Beheler, 103 S.Ct. 3517 (1983)

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Custody - Objective Test

- The determination of custody depends on the objective circumstances
- The subjective and undisclosed intent of the officer is irrelevant to the determination of whether the situation is custodial

Stansburry v. California, 511 U.S. 318 (1994).

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Roadside Questioning

- Officer may ask a "moderate number of questions" to determine identity and to try to confirm or dispel the officer's suspicions.
- Ordinary traffic stops are not custodial.

Berkemer v. McCarty, 104 S.Ct. 3138, 3150 (1984).

Reaffirmed by *Pennsylvania v. Bruder,* 488 U.S. 9 (1988).

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FSTs/Blood & Breath Tests

- Non-testimonial evidence is not subject to Fifth Amendment prohibitions.
- 5th Amendment prohibitions are prohibitions of physical or moral compulsions to extort communications, "not an exclusion of his body as evidence when it may be material."

Schmerber v. California, 384 U.S. 757, 763 (1966)(Compelled blood test).

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FSTs & Observations of Officers

"Slurred speech" in response to questions - even if suspect is in custody & videotape of a suspect's movements are non-testimonial & not subject to 5th Amendment restrictions.

Pennsylvania v. Muniz, 496 U.S. 582 (1990)

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Custody – police station

- *Miranda* warnings are not required "simply because the questioning takes place in the station house, or because the questioned person is the one the police suspect."
- *Miranda* is required "only where there has been such a restriction on a person's freedom as to render him 'in custody.'

Oregon v. Mathiason, 429 U.S. 492 (1977).

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Booking Information

Booking questions addressing biographical information are not subject to *Miranda.*

Pennsylvania v. Muniz, 496 US 582, 600 – 02 (1990).

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Private Persons

Miranda only applies to "questioning initiated by law enforcement officers/State action.

Miranda v. Arizona, 384 U.S. (1966).

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Must Be Clearly Invoked

- A suspects *Miranda* right to counsel must be invoked "unambiguously"
- Police are not required to clarify ambiguous or equivocal" statements
- Nor do they have to end the interrogation
- "Maybe I should talk to a lawyer" did not require the questioning to cease. *Davis*, at 462.

Davis v. United States, 512 U.S. 452, 459

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Invoking the Right

Invocation of the 6th Amendment Right to Counsel does not automatically invoke the 5th Amendment right. *McNeil v. Wisconsin,* 501 U.S. 171 (1991).

A person cannot vicariously invoke for another. *Moran v. Burbine*, 475 U.S.

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Refusals

- 5th Amendment not violated by introduction into evidence of defendant's refusal to submit to blood test
- Even when suspect was not warned results of test or refusal would be used against him in court.

South Dakota v. Neville, 459 U.S. 553 (1983)

Also applies to refusal of FSTs, breath and urine tests

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Waiver

- Waiver may be express or implied. *North Carolina v. Butler, 441* U.S. 369(1979).
- Waiver may be completed through words or conduct. *Butler, supra.*
- Generally, Waiver can only be applied to Constitutional Rights afforded to preserve a fair trial (not search and seizure). *Bustamonte*, 412 US 218 (1978).

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Waiver

- "Once it is determined that a suspect's decision not to rely on his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and that he was aware of the State's intention to use his statement's to secure a conviction, the analysis is complete and the waiver is valid as a matter of law."

Moran v. Burbine, 475 U.S. 412 (1986).

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Remedy for Fifth Amendment Violation

Suppression of the statements

***Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, (1966).**

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Cannot Use the Constitution as a Shield & a Sword

Harris v. New York, 401 U.S. 222, 91 S.Ct. 643 (1971);

United States v. Havens, 446 U.S. 620, 100 S.Ct. 1912 (1980).

Suppressed evidence can be used to impeach.

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Fifth Amendment and Double Jeopardy

The Double Jeopardy Clause of the 5th Amendment:

> "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb"

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Lesser and Greater Offenses

The acceptance of a guilty plea to lesser included offenses (such as the .08) while charges on the greater offenses (such as the .15) remain pending, does not implicate the double jeopardy clause.

Ohio v. Johnson, 467 U.S. 493, 501-2 (1984)

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4th Amendment

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

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Exclusionary Rule

- Sole purpose, is to deter future Fourth Amendment violations.
- "To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. . . .

Herring v. United States, 555 U.S. 135, 137 (2009).

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The Arizona Supreme Court has not granted greater protections under the state constitution except in cases involving warrantless home entries.

See, State v. Ault, 150 Ariz. 459 (1986); *State v. Bolt,* 142 Ariz. 260 (1984), *State v. Navarro,* 241 Ariz. 19 (App. 2016).

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The Court of Appeals Has

- Defendant lacked a reasonable expectation of privacy under the Fourth Amendment for his internet subscriber information (ISP).
- He did have a reasonable expectation of privacy in this information under Article II, § 8 of the Arizona Constitution.

State v. Mixton, 247 Ariz. 212 (App. 2019) (*review granted*).

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An Approach to Search & Seizure Issues

- Identify all arguments & theories supporting the admission of the evidence.
- Even if it appears the State will prevail under one of the arguments, complete the remainder of the analysis and present all valid arguments.
- Raising arguments in the lower courts will preserve them on appeal.

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Initial Analysis

- Does the 4th Amendment Apply?
  a) **did the Defendant have an expectation of privacy?**
  b) **was there a search or seizure?**
  c) **was there State action?**
- Were the Actions of the Officer/State reasonable? Was a valid warrant executed?
- Is there a warrant exception?
- Does the exclusionary rule apply?

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Expectation of Privacy

- General rule – a defendant cannot challenge search unless has a legitimate expectation of privacy in the area searched. *Rakas v. Illinois*, 439 U.S. 143 (1978).
- Burden – lies with the defendant to prove standing. *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980).

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No Expectation of Privacy

- **Passenger in glove compartment or area under the seat**. *Rakas v. Illinois*, 439 U.S. 128 (1978).
- **Plain View from Outside a car**. *Texas v. Brown*, 460 U.S. 730 (1983).

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Expectation of Privacy Abandonment

- **General rule** – A defendant has no standing to challenge the search of an item which he has abandoned. *Abel v. United State,* 362 U.S. 217 (1960).

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Was There a Search?

General Rule – No Search means no justification is needed under the 4th Amendment.

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NOT A Search

- **Exterior of Vehicles/License Plates -** *Cardwell v. Lewis,* 417 U.S. 583 (1974). Examination of tire & paint.
  - 4th Amendment applies to privacy not property, examination of the outside of a vehicle does not infringe on any rights to privacy. As long as there is probable cause, warrantless search of exterior of vehicle is reasonable.

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Examples of Searches

- **Blood draw.** *Schmerber v. California*, 384 U.S. 757, 767 (1966).
- **Urine tests.** *Ferguson v. City of Charleston*, 532 U.S. 67 (2001).
- **Thermal imaging equipment.** *United States v. Kyllo*, 533 U.S. 27 (2001).

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Examples of Searches

- **Manipulating, squeezing or moving an item**

Arizona v. Hicks, 480 U.S. 321 (1987); *Minnesota v. Dickerson*, 508 U.S. 366 (1994); *Bond v. United States*, 529 U.S. 334 (2000).

- If it is immediately apparent the object is contraband, there is no violation. *Minnesota v. Dickerson*, *supra.*

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Was there a Seizure?

General Rule – "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry v. Ohio*, 392 U.S. 1, 19, n. 16 (1968).

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Was there a Seizure?

- Police do not violate 4th Amendment protections by merely approaching individuals on the street and asking them questions. *Florida v. Bostick*, 501 U.S. 429 (1991).

- **TEST-** REASONABLE PERSON STANDARD: Would a reasonable person feel free "to disregard the police and go about his business"

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Officers May Ask

- For consent to search items. *Florida v. Bostick*, 501 U.S. 429 (1991); *Florida v. Royer*, 460 U.S. 491 (1983); *Drayton, supra.*
- If person will answer questions. *Royer, supra.*
- To see ID. *United States v. Mendenhall*, 446 U.S. 544 (1980).

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Suspect Not Seized Until Application of Physical Force or Submission to a Show of Authority

- *Brendlin v. California,* 551 U.S. 249 (2007).
- *United States v. Mendenhall*, 446 U.S. 544 (1980).
- *Michigan v. Chesternut,* 486 U.S. 567 (1988).
- *Broyer v. County of Inyo*, 489 U.S. 593, 596 (1989).
- *California v. Hodari D.*, 499 U.S. 621 (1991).

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No Seizure

- **Fleeing person**. *California v. Hodari*, 499 U.S. 621 (1991).
  - Must be physical force, however slight, or submission to show of authority
  - If suspect is fleeing, they are not seized by the officer
  - Evidence collected while fleeing will not be suppressed

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Was There State Action?

- **General Rule** – The 4th Amendment only applies to government action. *Walter v. United States*, 447 U.S. 649, 656 (1980).
- 4th Amendment does not apply to action by a private individual even if unreasonable. *Walter v. United States*, 447 U.S. 649, 656 (1980).

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If Fourth Amendment Applies

- Is there a violation?
  - Reasonableness of the officer: if circumstances objectively justify the action. *Scott v. United States,* 436 U.S. 128 (1978).
  - Was a valid warrant obtained?

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WARRANT EXCEPTIONS

- Exigent Circumstances make the needs of law enforcement so compelling that the warrantless search is objectively reasonable" Mincey v. Arizona, 437 U.S. 385, (1978).
- Search Incident to Arrest: Search may be made of the person and the area of the person's immediate control. Based on need to disarm and discover evidence. *U.S. v. Robinson*, 414 U.S. 218 (1973).
- Search of Automobiles – probable cause to believe vehicle contains contraband. Scope defined by object of search and reasonable belief of where it might be. U.S. v. Ross 456 U.S. 798 (1982).

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Exclusion IS NOT Automatic

- Suppression of evidence should be the rare exception, not automatically imposed.
- "Suppression of evidence has always been our last resort, not our first impulse." *Utah v. Strieff*,.
  - Attenuation doctrine: connection between unconstitutional police conduct and the evidence is remote so that "the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained."

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Exclusionary Rule

- Is not a right of the defendant.
- Applies ONLY where it results "in appreciable deterrence" of future Fourth Amendment violations.
- The benefits of deterrence must outweigh the costs.

United States v. Leon, 468 U.S. 897 (1984).

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Exclusionary Rule Does Not Apply

- When binding case law is later overturned. *Davis v. United States*, 564 U.S. 229 (2011).
- When search relied on subsequently invalidated statute. *Illinois v. Krull*, 480 U.S. 340 (1987).
- "Objectively reasonable reliance" on a warrant later held invalid. *Leon*, at 922. ("good-faith rule.")

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Anonymous Tips and Citizen Information

- Information obtained from citizens or other law enforcement officers may provide probable cause or reasonable suspicion.
- An officer can make a stop/seizure based on information received from an anonymous tip, as long as there is sufficient corroboration.

Adams v. Williams, 407 U.S. 143 (1972); *Illinois v. Gates*, 462 U.S. 213 (1983); *Alabama v. White*, 496 U.S. 325 (1990); *Florida v. JL*, 529 U.S. 266 (2000).

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Do Not Automatically Concede 911 Calls As Anonymous

- 911 calls are more reliable than conventional anonymous tips
  - they have provisions for recording, identifying and tracing callers
  - the 911 caller's phone number cannot be blocked
  - this provides protections against making false reports.

Navarette v. California, 572 U.S. 393 (2014).

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Communal Police Knowledge

- Law enforcement can act on directions and information transmitted by one officer to another. *United States v. Hensley*, 469 U.S. 221 (1985).

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REASONABLE SUSPICION TO STOP

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STANDARDS

- The standard is "reasonable suspicion"
- The facts must be examined as they existed at the time of the stop.

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Standard

- Level of objective justification required for a stop "is considerably less than proof of wrongdoing by a preponderance of the evidence."
- It is likewise less than probable cause.
- A series of innocent facts can, when taken together, amount to reasonable suspicion.

United States v. Sokolow, 490 U.S. 1 (1989).

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Pretext Stops

- There is no pretext stop defense
- Officer's "subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis."
- [W]e have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers."

***Whren v. United States*, 517 U.S.806 (1996).**

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Reasonable Mistake of Fact or Law

- Reasonable suspicion for a stop can be based on officer's reasonable factual mistake.
- A search or seizure, including a traffic stop, may be based on a reasonable mistake of law.
- Reasonableness of both mistakes will be evaluated objectively. The subjective understanding of the officer is not considered.

Heien v. North Carolina, 574 U.S. 54 (2014).

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DUI – *Navarette* 572 U.S. 393

- 911 caller's account of being run off road provided reasonable suspicion of DWI.
- The fact that there may be an innocent explanation for the driving behavior does not negate reasonable suspicion of DWI

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DUI – *Navarette* 572 U.S. 393

- Fact that officer didn't witness additional suspicious driving after defendant's car was located did not refute reasonable suspicion of impaired driving.
- Officer who already possesses reasonable suspicion is not required to follow & monitor a vehicle at length merely to personally perceive suspicious driving. Especially for suspected DUI because "allowing a drunk driver a second chance for dangerous conduct could have disastrous consequences." *Id.* at 405.

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DUI – *Navarette* 572 U.S. 393

- "[W]e can appropriately recognize certain driving behaviors as sound indicia of drunk driving."
  - weaving all over the roadway
  - crossing the center line on a highway and "almost causing several head-on collisions"
  - driving " 'all over the road' " and " 'weaving back and forth'
  - driving in the median

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More Opinions

- **Failure to Signal**: *Whren v. United States,* 517 U.S. 806 (1996).
- **Suspended/Revoked License**: *Kansas v. Glover,* 140 S.Ct. 1183 (2020); *Delaware v. Prouse,* 440 U.S. 648, 658 (1979).
- **Speeding:** *Whren v. United States,* 517 U.S. 806 (1996).

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Prolonging Stops – Dog Sniffs

- Police may not prolong a traffic stop for a dog sniff without additional reasonable suspicion
- Authority for the seizure ends when the tasks related to the stop (getting paperwork, check for warrants, etc.) are or should be complete
- Key issue - does the dog sniff prolong the stop

Rodriguez v. United States, 135 S.Ct. 1609 (2015).

See also, *Florida v. Royer*, 460 U.S. 491 (1983); *Arizona v. Johnson,* 555 U.S. 323 (2009):

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Chemical Testing: Blood, Breath' Urine and Saliva

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Breath Tests

The Fourth Amendment allows a state to compel a warrantless breath test as a search incident to a lawful arrest for impaired driving suspects.

Birchfield v. North Dakota, 579 U.S. __, 136 S. Ct. 2160 (2016).

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Blood – Search Warrants

- General Rule - warrant is needed to draw blood if suspect refuses.

Dissipating alcohol (drugs) in the suspect's system does not provide an automatic exigency.

- Exigency exception is based on "totality of the circumstances."

(Remember, consent allows the test.)

Missouri v. McNeely, 133 S.Ct. 1552 (2013);
Birchfield v. North Dakota, 136 S.Ct. 2160 (2016).

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BLOOD DRAW MEDICAL EXCEPTION

- Dissipating Blood Alcohol Concentrations Does Not Create an Exigent Circumstance by itself
- HOWEVER, it does so when combined with other pressing needs *Schmerber*, 384 US at 770.
- Unconscious Driver with Immediate Medical Needs may create delay in obtaining evidence and could create exigent circumstance.
  - *Mitchell v. Wisconsin* 139 S.Ct. 2525 (2019).
  - Be Aware of Stricter AZ case law *State v. Nissley* 241 Ariz. 327 (2017).

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Preserved Breath Samples

The Due Process clause does not require police officers to preserve breath samples in order to introduce the results of breath-alcohol tests at the trials of suspected impaired drivers.

California v. Trombetta, 467 U.S. 479 (1984)

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Questions?

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Thank You!

Materials by Beth Barnes

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